

EXHIBIT B

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FILED

JUN 25 PM 2:37

David Scheiber
By: M. Rawson

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14 BOSTON PRIVATE BANK & TRUST COMPANY

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SANTA CLARA

17 BOSTON PRIVATE BANK & TRUST
18 COMPANY, a Massachusetts banking
19 corporation and successor in interest to
20 Borel Private Bank & Trust Company,

21 Plaintiff,

22 v.

23 KIMOMEX SANTA CLARA, LLC, a
24 California limited liability company; 272
25 E. SANTA CLARA GROCERY, LLC, a
26 California limited liability company; and
27 DOES 1 through 50, inclusive,

28 Defendants.

CASE NO. 1-13-cv-247691

UNLIMITED JURISDICTION

**REPLY DECLARATION OF DAVID
SCHEIBER IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR APPOINTMENT OF
RECEIVER AND RESTRAINING ORDER
IN AID OF RECEIVER**

Date: June 27, 2013

Time: 3:00 p.m.

Dept.: 5

[SIGNATURE BY FACSIMILE]

I, David Scheiber, declare as follows:

1. I am the Senior Vice President – Special Assets Department at Plaintiff Boston Private Bank & Trust Company (“Bank”), which is the Plaintiff in the above-entitled action. I have been assigned the responsibility for administration and enforcement of loan which is at issue in this case, including the Bank’s rights under its deed of trust and assignment of rents for the property which secures the loan.

1 2. I make this declaration in reply to the opposition papers of defendant 272 E. Santa
2 Clara, LLC (the "LLC") and in support of the Bank's Motion for Appointment of Receiver and
3 Preliminary Injunction relating to the property located at 272 East Santa Clara Street, San Jose,
4 CA 95112 (Assessor's Parcel No. 467-24-111) (the "Property").

5 3. On May 21, 2013, I met with Andrew Lewis, manager of the LLC to discuss this
6 matter.

7 4. Mr. Lewis claimed to me and my colleagues who were with me that the LLC did
8 not have the money or the expertise to deal with the environmental issues related to the Property
9 and that he needed cash flow for his investors. He later reiterated to me in a voicemail that the
10 LLC had no money to address the environmental issues. He never withdrew those statements in
11 any later communication.

12 5. Lewis also made claims that the Bank had "defrauded" his other company,
13 Investment Grade Loans, Inc. ("IGLI") and its investors by not telling them about the
14 environmental issues on the Property. However, in that conversation, first Lewis claimed that the
15 fraud had occurred when the loan was originally made, not when the Agreement Re Foreclosure
16 was made. When pressed about this, he changed his story and started asserting that the so-called
17 fraud was later. Mr. Lewis was inconsistent in his contentions. Furthermore, he admitted to us
18 that IGLI had done no due diligence of its own regarding environmental conditions on the
19 Property.

20 6. Prior to meeting with Mr. Lewis, I sent him a letter confirming that he had rejected
21 the proposal in the draft Fourth Amendment To Agreement Re Foreclosure Sale and it was
22 withdrawn. A copy of that letter is attached to this declaration as Exhibit 1. My understanding
23 based on discussions with my predecessor is that Mr. Lewis had earlier made a number of
24 demands on or proposals to the Bank such as proposing to buy the Bank's loan for a steeply
25 discounted price of \$1.2 million or getting unlimited time to deal with the environmental issue
26 while collecting all of the cash flow from the property. None of Lewis' proposals were
27 acceptable to the Bank, and the terms in the draft Fourth Amendment To Agreement Re
28 Foreclosure Sale were the only proposal which the Bank ever made following expiration of the


1 Third Amendment. Lewis rejected that proposal. We reiterated in our May 21 meeting with Mr.
2 Lewis that the last agreement IGLI had with the Bank was the Third Amendment and that it had
3 expired by its own terms. Neither in our May 21 meeting with him nor in any of the subsequent
4 voice messages he left me did Mr. Lewis ever claim to me that an agreement had been reached
5 between him and anyone at the Bank regarding a further deal after expiration of the Third
6 Amendment To Forbearance Sale Agreement which expired on December 31, 2012.

7 7. The original borrower defaulted on property taxes for the subject property in the
8 amount of \$235,466.40. I have confirmed that amount and that those property taxes remain in
9 default by checking the information publicly available on the Santa Clara County Assessor's
10 website for the Property.

11 8. The Bank has not received the rents apparently collected from the Property by the
12 LLC for the months of April and May 2013. The rents are not being paid through a lock box or
13 other collateral account over which the Bank has any control or access. The rents for April and
14 May alone total approximately \$80,000 and constitute part of the Bank's collateral.

15 9. Lastly, I received a communication from the tenant at the Property that there are
16 roof leaks in the building. Roof leaks are likely a structural issue that will need to be addressed.
17 The receiver we have nominated has the experience to address such issues as part of her
18 management of the Property.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct, and that this declaration was executed on June 25, 2013 at Encino,
21 California.

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23 David Scheiber
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EXHIBIT 1

BOSTON PRIVATE BANK
& TRUST COMPANY

May 13, 2013

By email and regular mail

Mr. Andy Lewis
Investment Grade Loans, Inc.
475 S. San Antonio Road
Los Altos, CA 94022
email: igli@sbcglobal.net

**Re: Boston Private Bank & Trust Company Loan Secured By Property at 272 E.
Santa Clara Street, San Jose, CA**

Dear Mr. Lewis:

I am writing to introduce myself and advise you of a change in administration of Boston Private Bank's loan secured by the above property. Bruce Brown, with whom you have previously dealt, has left the Bank. Responsibility for the loan and for the Bank's relationship with Investment Grade Loans, Inc. and 272 E. Santa Clara Grocery, LLC have now been assigned to me. I therefore want to schedule a meeting with you to discuss the status of the property and the Bank's foreclosure proceedings. I will be in the Bay Area on May 21, 2013, and request that we meet on that date in our office at 160 Bovet Road, San Mateo. I propose that we meet at 2:00 P.M. Please let me know a convenient time for you to meet on that date.

In the meantime, Mr. Brown advised me that he provided to you a draft proposed Fourth Amendment To Agreement Re Foreclosure Sale but that you did not execute it and have rejected its terms. Accordingly, as of this time, the proposal in the draft Fourth Amendment is withdrawn. The relationship between the Bank, on the one hand, and Investment Grade Loans, Inc. and 272 E. Santa Clara Grocery, LLC, on the other hand, remains governed by the provisions of the Third Amendment to Agreement Re Foreclosure Sale, which the parties executed in March 2012. Pursuant to the provisions of that agreement, the Bank may proceed with its foreclosure and other remedies at any time after December 31, 2012.

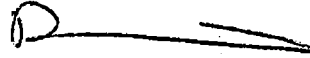
I look forward to meeting you and having a fuller discussion of the status of the property and the parties' relationship.

Mr. Andy Lewis

May 13, 2013

Page 2

Sincerely,
Boston Private Bank & Trust Company

A handwritten signature in black ink, appearing to be 'D. Scheiber', with a long horizontal stroke extending to the right.

David Scheiber
Senior Vice-President